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But It All Happened Online—Where Do We Stand as a School?

Student Rights in Noninstructional Matters

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This case was developed as part of a school law course in an educational leadership preparation program and focuses on a school's legal right to discipline a student for creating and posting two offensive Web sites: One was generated during instructional time, and the other was completed off-site during non-instructional time. The second Web site may have compelled another student to attempt suicide and definitely embarrassed a teacher and the school's administration. The case addresses an important legal issue administrators must understand if they are to make appropriate and legally justified decisions in an era in which students are increasingly capable Web designers. In this case, a secondary teacher and one of her students were objects of ridicule in a posted Web site created in school by another student. Both students were 16-year-old sophomores. When the school's assistant principal was made aware of the Web site, the offending student received a 2-day suspension and was warned never to use school technology to deride teachers or students again. All parties accepted this decision, save for the offending student, who proceeded to post a similar Web site from home. This second, more vitriolic Web site, humiliated not only the student and teacher targeted in the original Web site but the administration as well. This site had a profound effect on the student depicted on it, who attempted suicide. As a result of these actions, the school's principal initiated due process to expel the offending student. This case is a fictionalized version of two real cases. All names of students, teachers, administrators and schools are pseudonyms. Likewise, dialogue presented in this case is presented to facilitate the reader's understanding of legal issues and is not derived from actual evidence or proceedings.

Keywords: *free speech; Internet usage; student rights*

Background

Lighthouse Bay High School (LBHS) is located in a large city in southern Florida. The area surrounding the school is mainly residential, consisting of single-family homes owned by middle- and upper-middle-class individuals. LBHS is a new high school, established in 2000, and sits on an 18-acre plot. The school serves students in Grades 9 through 12. Although LBHS has capacity for 2,200 students, the school currently has an enrollment of 2,450. The student body is 78% Hispanic, 17% White, 4% African American, and 1% multiracial. LBHS employs a total of 165 part-time and full-time employees, including faculty, staff, and administration. LBHS is led by a principal and 4 assistant principals, 91 personal information managers (formerly known as classroom teachers), 15 technology and computer studies specialists, 6 guidance counselors, and various other staff. Of the total student enrollment, about 300 students are enrolled in the school's technology and computer studies magnet program.

The 1-year-old technology and computer studies magnet program is popular at LBHS and is expected to continue to grow; many of the students' families are involved with high-tech industries nearby at the IBM/Southern Trust Knowledge Development Center (IBM/STKDC). Through the Neighbors/Vecinos Program, the district and IBM/STKDC have developed a profitable working partnership that provides LBHS with the latest developments in technology for education and training. The principal, Viviana Hernandez, has said "The technology and computer studies magnet program's goal is to create a paperless learning experience during which every student enrolled will have access to the latest technological equipment and thus have the potential to create the future, not just endure it." IBM/STKDC benefactors hope the program will help provide well-trained employees who can join their organization upon graduation.

Principal Hernandez has led LBHS's efforts to replace classrooms with wireless information centers (WICs) where all students work on laptops. WICs are composed of groups of 20 "tech-designers" (students) who are required to maintain a personal Web site while also working to support Web sites as part of their coursework. Each WIC student works in an information center with his or her own personal information manager (teacher). In addition, each manager has a personal laptop to be used for instructional planning and grading. Parents are able to access their child's grades online as well as communicate via e-mail with the managers to monitor their child's progress. Students regularly communicate with teachers via e-mail to request assistance with assignments. There is also a vibrant e-community among the students, who constantly exchange e-mails and Web-based materials for fun.

Case Narrative

In August 2004, Lo West, a sophomore student enrolled at LBHS, began work in the technology and computer studies magnet program. After his mother's sudden death in a 1995 car accident, Lo found great solace in the rapidly developing virtual aspects of the computer industry and was ecstatic when he was admitted into the program. Lo's father is employed as an engineer at IBM/STKDC and encouraged Lo to follow in his footsteps by buying him the latest computer equipment and software available. After a successful first semester in the program, Lo moved into the Web design and programming phase of his course sequence. His new personal information manager was Ms. Vasquez, a new hire who had earned her teaching certificate in the spring of 2003. Although a novice teacher, Ms. Vasquez, 23, had completed her MS in computer studies education. She was hired by the school district and assigned to the magnet program.

Lo's WIC consisted of 20 students led by Ms. Vasquez. Lo and another student in the WIC, J.J. Lee, had been classmates in middle school. Whereas Lo had joined the magnet program enthusiastically, J.J. had done so without much interest. J.J.'s parents, who were somewhat technologically literate, thought the magnet program would be a wonderful experience and had pushed hard for him to apply. They forced him to sit down and fill out the application and helped edit and reedit his entrance essays. When he was accepted, J.J. was indifferent to the program. He was a listless and lonely student, friendless and prone to frequent mood swings. At home, his parents sometimes found him sitting in the dark, crying in his bedroom but were quick to dismiss his actions. They believed that J.J. was going through a natural phase of adolescence and that his behavior was just part of growing up. "He'll get over it," his dad would often say.

Lo and J.J. had once been friends but then drifted apart. Back in middle school, J.J. was always more timid and withdrawn, but Lo invited him to play video games after school several times and they had developed a bond. Their friendship continued into the beginning of their freshman year at LBHS, but by February they rarely spoke. Whereas Lo thrived in the new environment, J.J. had trouble keeping up academically and was nearly always alone. Lo made new friends; J.J. did not. By their sophomore year, the boys never spoke, except when paired up on a project during class time. Whereas Lo was one of the program's stars, J.J. was relatively anonymous. Sometimes, Lo would amuse the class by making up stories about himself and other classmates to post on his personal Web site during their independent processing time.

For Lo, sophomore year had been a breeze and the magnet program gave him an opportunity to excel academically and pursue a passion. He liked most of his personal information managers, with the exception of Ms. Vasquez, in Web page design. To him, she seemed a little too stiff and inexperienced. From his first sessions in her WIC, Lo would send e-mails to all classmates, except J.J., pointing out even the smallest of faults in her performance. In his opinion, J.J. had become just too weird to deal with socially. Despite this underhanded maneuver, Lo always received the highest grades, and Ms. Vasquez often used his work to show the class examples of well-done exercises. On one occasion, Ms. Vasquez even encouraged Lo to be funny or to poke a little fun at the world around him. "You should be a comedian," she said. "You'd make millions creating online comics." She had no idea she had been the butt of dozens of his e-mailed jokes.

Incident 1: The Secret Lives of the Virtual Web

During the semester, J.J. grew increasingly distant. He couldn't stand being around his classmates anymore and felt ostracized. He sensed that they were all communicating via e-mail and that he was not included. He lost the already waning motivation he had to go to school and started skipping classes. After five absences in 2 weeks, Ms. Vasquez finally called his guidance counselor and said, "J.J. seems very unhappy with the school. Would you please speak to him?" The counselor, Ms. Diaz, set an appointment to meet with J.J. the following week. J.J. received a summons to her office but had no interest in seeing Ms. Diaz—or anyone else for that matter. He did not come to school the day of the appointment.

On that same day, after being in Ms. Vasquez's Web page design class for approximately 35 minutes, Lo was bored. He looked around the room and noticed Ms. Vasquez was very busy working one on one with another student. He also noticed that J.J. was absent. Lo began to create a Web page describing "The Secret Lives of the Virtual Web." He poked fun at several students in the WIC, making claims that they were having amorous affairs with other students in the room. Ms. Vasquez was also pictured as a computer dominatrix. "How do I describe that boring J.J.?" he thought. Lo got a bit creative and portrayed J.J. as a sexual deviant expressing homosexual desires toward other male students in the class. Right before the bell rang, Lo managed to save his creation and post it to the Web. He forwarded messages announcing the new page to all 18 classmates, leaving out only Ms. Vasquez and J.J.

As the day progressed and students opened their e-mail, a buzz began with Ms. Vasquez's students and quickly spread. "Did you see this?" was the com-

mon phrase heard around the LBHS campus. Some students were howling laughing while others did not find it so amusing. Two students who were members of Ms. Vasquez's Web page design course were furious at the lack of sensitivity and crass humor. During lunch, they sought out Ms. Vasquez to inform her of what they had seen.

Ms. Vasquez was shocked to see herself described in such a way. She immediately went to Mr. Combes, the assistant principal, and showed him the Web page. Mr. Combes in turn immediately informed Mrs. Hernandez, the LBHS principal. As the school day was coming to a close, Mrs. Hernandez called the West home and set up a meeting with Lo and his father for the following morning to review the incident.

Oblivious to what was going on, J.J. stopped in the cafeteria to buy chocolate milk the next morning. Suddenly three boys surrounded him and started making mock kissing sounds and lewd gestures. J.J. felt very uncomfortable and tried to ignore them, but they persisted. Finally, Manny, another student in Ms. Vasquez's class, spoke up, "What's all this about you being gay?"

J.J. was stunned. "Me, gay? Where did you hear that?"

"It's right here," said Manny. "All over the World Wide Web."

J.J. looked down at the laptop screen Manny was holding. He couldn't believe his eyes. The boys noticed he was visibly embarrassed. He pushed them away and ran out of the cafeteria toward his home, tears streaming down his face.

The next morning, Mrs. Hernandez, Mr. Combes, Ms. Vasquez, Mr. West, and Lo met at school. Mrs. Hernandez initiated the meeting by informing Mr. West of his son's inappropriate behavior and sharing printouts of Lo's offensive Web page. She then went on to explain that creating a Web site on school property during instructional time was unacceptable. Also, embarrassing a faculty member and other students was inappropriate and would not be tolerated. She continued by citing a school district policy that read, "School computers and technology are not to be used in an offensive manner and are for instructional purposes only." Lo admitted that he had made fun of Ms. Vasquez and that his jokes were crude, but he meant no harm. Mr. West expressed that he thought the Web site was just a childish prank and he could handle punishment by taking care of it at home. Lo apologized to Ms. Vasquez. Mrs. Hernandez demanded that Lo immediately delete the Web page and then also announced her decision to suspend Lo for 2 days because of his actions. Ms. Vasquez walked out of the meeting at ease, feeling as though the situation had been resolved. Mr. West felt the punishment was severe and worried that the punitive action might go on Lo's permanent record but remained silent because he did not want to create any ill feelings with the school.

Incident 2: A Shift From Campus to Home

Later that afternoon, Mr. West spoke to Lo at home. "I'm disappointed in your actions. You're grounded for 2 weeks."

"But, Dad," cried Lo, "this weekend is the big 'Virtual Blast-off' at Ponce Place. Everyone is going."

"You're not, Mr. Webmaster!" responded Dad. "In fact, go to your room right now."

Lo became very upset. All this buzz about a little Web page! Well, he thought, they can't tell me what to do outside of school time, it's my own business what I create here. With that in mind, Lo turned on his computer and proceeded to make a new Web site, "The Secrets of the Virtual Web, Part II." This version was even more graphic than the first and attacked not only Ms. Vasquez but also his classmates and the administration. As Lo was sure J.J. had turned him in, he directed special attention and venom toward his old friend. Lo had a good laugh at his work and then forwarded the page to the home e-mail addresses of his classmates, including J.J. "I hope they laugh as hard as I do!" he said aloud.

The following morning, Mrs. Lee called for J.J. to get out of bed. After several attempts and no response, she opened his bedroom door to find him lying on the floor with an empty bottle of prescription tranquilizers by his side. Panicked, she called 911. As she stood at J.J.'s desk, the monitor of the computer displayed Lo's new Web page.

Later that day, Mrs. Hernandez called the West home and informed Lo that for having disrupted the learning environment at Lighthouse Bay High School and harassing and bullying a fellow classmate he was being recommended for expulsion. The district representative would be contacting him by the end of the day.

Questions to Prompt Discussion and Analyses

1. What factors justify school discipline for off-campus student behavior?
2. Should the personal opinion or creativity of a student on the Internet be protected as free speech by the First Amendment?
3. How does a school show that a student's behavior, as in this case—using Internet communication—had a negative or detrimental effect on school personnel, other students, or on the general educational order?
4. What kind of legal case could Mr. West and Lo have had if they chose to fight Lo's suspension for the first Web page?
5. Does a school have a right to discipline a student or even its staff for inappropriate use of the Internet or other misconduct while they are off school property?

Teaching Notes

Many public school students have a great deal of technological sophistication. As such, administrators must remain informed about the legal implications of rapidly evolving aspects of school law pertaining to electronic media and personal expression if they are to make appropriate and well-informed decisions. This case features two related scenarios that highlight complications posed when an irresponsible but technologically savvy student posted distasteful materials on a Web site during instructional time. The Web site targeted one student and one teacher in particular. The offending student was reprimanded and warned never to use school technology to deride teachers or students again but ignored the warning and instead posted an even more derisive Web site from his home while serving a suspension. The second Web site humiliated not only the teacher and student attacked on the first Web site but also the administration. As a result of being depicted on the site, the victimized student attempted suicide. The school's principal initiated due process to expel the offending student—but were these incidents handled properly?

Using this case as a teaching aid, instructors may choose to reference several legal cases and concepts. First, several rulings germane to the issues in this case have recently set precedents in several states (see e.g., *Coy v. Board of Education*, 2002; *Flaherty v. Keystone Oaks School District*, 2003; *J.S. v. Bethlehem Area School District*, 2002; *Killion v. Franklin Regional School District*, 2001; *Mahaffey ex rel. Mahaffey v. Aldrich*, 2002). The instructor will want to present and/or assign students the task of determining the legal standing of these issues in their state and/or region. In addition to these somewhat “localized” interpretations, the issue of allowing student expression or speech that may or may not exceed their First Amendment rights is an interesting, complicated, and important topic to discuss. With respect to this particular aspect of the case at hand, the key legal determination depends on whether the student by his actions, conduct, or speech adversely affects the discipline, safety, and order of the school. The burden of proof lies with the school to show there is a direct correlation between the student's actions and the negative effect in the school environment (Cambron-McCabe, McCarthy, & Thomas, 2004). To date, there are no Supreme Court cases that deal directly with the use of the Internet (as electronic expression) in relation to First Amendment rights. There are, however, three landmark Supreme Court cases on which more recent rulings have been based.

The first case dealing with students' First Amendment rights is *Tinker v. Des Moines Independent School District* (1969). In *Tinker v. Des Moines*, the Supreme Court ruled that

a student may express opinions on controversial issues in the classroom, etc. as long as the exercise of such rights does not materially and substantially interfere with the requirements of appropriate discipline in the operation of the school or collide with the rights of others. (Cambron-McCabe et al., 2004, p. 118)

The next two Supreme Court cases made it clear that *Tinker* does not give students the green light to say or express themselves as they please. *Bethel School District No. 403 v. Fraser* (1986) “held that individuals cannot claim a First Amendment right to voice or publish obscenities” (Cambron-McCabe et al., 2004, p. 109). This ruling granted school authorities the right to censor lewd, vulgar, and indecent student expressions and also granted school leaders the right to discipline students for this type of negative expression (Cambron-McCabe et al., 2004). *Hazelwood School District v. Kuhlmeier* (1988) established that school officials “may impose reasonable restrictions on the speech of students, teachers, and other members of the school community” as long as decisions are based on legitimate pedagogical concerns (Cambron-McCabe et al., 2004, p. 115).

The instructor may also use this case to illustrate the following general principles for educational leaders to consider with regard to issues raised in this case:

1. School rules must be reasonable and designed to further the mission of the school (e.g., school technology is used for academic purposes only).
2. Discipline for rule infractions should vary depending on the type of the offense and the context in which it occurred. To discipline speech in school, on campus, the school must believe that the speech is lewd, vulgar, or indecent.
3. Students can be disciplined for misbehavior occurring off school grounds if there is a connection between the school and the off-campus behavior.
4. To discipline for off-campus speech, a school must show that the speech caused a substantial disruption at school (or that the school reasonably believed that such a disruption would occur) or presented an on-campus danger.
5. The key determinant in Internet communication cases appears to be whether the material created off campus has a direct and detrimental impact on the school.
6. School officials should attempt to state clear computer and Internet use policies in their student handbooks for on-campus technological resources and as guidelines for general student use.

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